

REMARKS

This is in response to the Office Action mailed on October 12, 2004, and the references cited therewith.

By this office action, claims 1 and 10 are amended, claim 9 is canceled, and claim 25 is added. As a result, claims 1-8 and 10-25 are now pending in this application. No new matter was added. Applicant respectfully requests reconsideration of this application in view of the above amendments and the below remarks.

Objection to the Drawings

Objection: Various objections to the drawings were set forth in paragraphs 1 – 3 of the Office Action dated October 12, 2004.

Response: Figure 9 is amended to include the label “Prior Art”. Figure 1 has been amended to add the reference numbers 9000 and 2000. Figure 2 has been amended to add the reference numbers 7001, 7002 and 710. Reference number 730 has been eliminated from Figure 2. Figure 11 has been amended to change the reference number on one of the sidewalls of the lug 1130 to sidewall 1131. Figure 10 has been amended to eliminate element 1050. Reference number 830 of Figure 9 corresponds to what was referred to in the specification as lug 730. The specification has been amended to refer to lug 830 in the text.

These amendments now overcome the various objections set forth in the office action.

§112 Rejection of the Claims

Rejection: Claims 1-9 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Response: Claim 1 has been amended to particularly point out and distinctly claim the subject matter of the invention. Claim 9 has been cancelled thereby obviating the rejection with respect to claim 9.

§102 Rejection of the Claims

A. Rejection: Claims 1-5 and 9 were rejected under 35 USC § 102(b) as being anticipated by Witt (U.S. 6,062,662).

B. Response: Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Claim 1 recites "...a driver sprocket for said track having a central axis about which the driver sprocket rotates, the driver sprocket also having a driving portion that includes a center, the driving lugs having sidewalls which make an angle with respect to the inner surface of the track such that when the driving lug engages the driving portion of the driver sprocket, **the sidewall of the driving lug being substantially parallel to a radial from the central axis of the driver sprocket through the center of the driving portion of the drive sprocket when engaged with the track.**" This claim was not amended to overcome the art cited but to more clearly define the invention. The Examiner contends that FIG. 2 of the Witt reference shows all of the elements set forth in claim 1. Claim 1 that sets forth the relationship (bolded above) not found in the Witt reference. Looking at FIG. 2 of the Witt reference, a line corresponding to the sidewall surface of the driving lug is no where near parallel to a radial from the center of the drive sprocket and through the driving portion engage with the driving lug (a sleeve such as one of the sleeves having a portion of the arc 7-7 passing therethrough). Accordingly, the rejection of claim 1 under 35 USC § 102(b) as being anticipated by Witt (U.S. 6,062,662) is now overcome.

Claims 2-5 depend from claim 1 and include the recitations of claim 1 by their dependency. Accordingly, claims 2-5 now also overcome the rejection under 35 USC § 102(b) as being anticipated by Witt (U.S. 6,062,662).

Claim 9 was cancelled by this amendment.

C. Rejection: Claims 1-3 and 9 were rejected under 35 USC § 102(b) as being anticipated by Nagorcka (U.S. 5,352,029).

D. Response: Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Claim 1 recites “...a driver sprocket for said track having a central axis about which the driver sprocket rotates, the driver sprocket also having a driving portion that includes a center, the driving lugs having sidewalls which make an angle with respect to the inner surface of the track such that when the driving lug engages the driving portion of the driver sprocket, **the sidewall of the driving lug being substantially parallel to a radial from the central axis of the driver sprocket through the center of the driving portion of the drive sprocket when engaged with the track.**” This claim was not amended to overcome the art cited but to more clearly define the invention. The Examiner contends that FIGs. 5 and 11 of the Nagorcka reference shows all of the elements set forth in claim 1. Claim 1 that sets forth the relationship (bolded above) not found in the Nagorcka reference. FIG. 11 of the Nagorcka reference does not show the driving portion of sprocket engaging the drive lug of the track. FIG. 5 of the Nagorcka reference shows the driving portion of sprocket engaging the inner portion of the track but not engaging the drive lug of the track. FIG 6 of the Nagorcka reference shows the driving portion of sprocket engaging the drive lug of the track. Neither FIG. 5 or FIG. 6 of the Nagorcka shows

the element having the relationship set forth above. Referring to FIG. 5, a line corresponding to the sidewall surface of the driving lug 11 is no where near parallel to a radial from the center of the drive sprocket and through the driving portion engaged with the driving lug 7. A radial from the center of the driving sprocket would be near the line shown that is more or less perpendicular to the inner surface of the track 44. FIG. 6 confirms the lack of the element having the relationship discussed above as a line corresponding to the surface of the sidewall of the driving lug is no where close to parallel with respect to a line (radial) passing through element 7 and the center of the driving sprocket (termed a drive wheel 5 in the Nagorcka reference). Accordingly, the rejection of claim 1 under 35 USC § 102(b) as being anticipated by Nagorcka (U.S. 5,352,029) is now overcome.

Claims 2-5 depend from claim 1 and include the recitations of claim 1 by their dependency. Accordingly, claims 2-5 now also overcome the rejection under 35 USC § 102(b) as being anticipated by Nagorcka (U.S. 5,352,029).

Claim 9 was cancelled by this amendment.

§103 Rejection of the Claims

A. Rejection: Claims 10-24 were rejected under 35 USC § 103(a) as being unpatentable over Witt.

B. Response: The Examiner rejected claims 10-24 based solely on the Witt reference. For the reasons set forth above, Applicant respectfully traverses the single reference rejection under 35 U.S.C. § 103 since not all of the recited elements of the claims are found in the Witt reference. Since all the elements of the claim are not found in the reference, Applicant assumes that the Examiner is taking official notice of the missing elements. Applicant respectfully objects to the taking of official notice with a single reference obviousness rejection and, pursuant to M.P.E.P. § 2144.03, Applicant respectfully traverses the assertion of Official Notice and requests that the Examiner cite references in support of his position.

In addition to the above, the Examiner has also failed to make out a *prima facie* case of obviousness. In order for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Claim 10 recites "...a pitch line positioned between the interior surface and the exterior surface; and driving lugs attached to the interior surface of the drive belt, each of the driving lugs having at least a first sidewall making an angle with respect to the pitch line of the track, the angle being in the range of $[90 - (360/2n)]$ plus or minus 5 degrees." This claim was not amended to overcome the art cited but to more clearly define the invention. The Examiner admits that the Witt reference "...does not specify the first sidewall of the driving lugs making an angle with respect to the pitch line of the track, wherein the angle is in the range of $[90 - (360/2n)] \pm 5, 3, 2, 1, \text{ or } 0$ degrees $\{n \text{ being the number of driving lugs on the track}\}$." (See page 9, lines 2-4 of the office action). The Examiner then just states that all the features would be obvious. There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. There is no motivation from within the reference to modify the art. The reason seems to be a way to provide interaction between the lug and the driving member. Witt teaches a different way of accomplishing this with no hint of the way set forth in the claim. The Examiner seems to be applying hindsight in order to come up with the way set forth in claim 10.

Furthermore, the prior art reference must teach or suggest all the claim limitations. The Witt reference does not contain a teaching regarding the angle that the sidewall of the drive lug makes with respect to the pitch line of the track. In fact, the word angle was not found in an electronic search of the Witt reference. As a result, claim 10 overcomes the rejection under 35 USC § 103(a) as being unpatentable over Witt.

Claims 11 - 24 depend from claim 10 and include all the limitations of claim 10 by their dependency. As a result, claims 11 - 24 overcome the Examiner's rejection under 35 USC § 103(a) as being obvious in view of the Witt reference.

C. Rejection: Claims 10-16 were rejected under 35 USC § 103(a) as being unpatentable over Nagorcka.

D. Response: The Examiner rejected claims 10-16 based solely on the Nagorcka reference. For the reasons set forth above, Applicant respectfully traverses the single reference rejection under 35 U.S.C. § 103 since not all of the recited elements of the claims are found in the Nagorcka reference. Since all the elements of the claim are not found in the reference, Applicant assumes that the Examiner is taking official notice of the missing elements. Applicant respectfully objects to the taking of official notice with a single reference obviousness rejection and, pursuant to M.P.E.P. § 2144.03, Applicant respectfully traverses the assertion of Official Notice and requests that the Examiner cite references in support of his position.

In addition to the above, the Examiner has also failed to make out a *prima facie* case of obviousness. In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Claim 10 recites "...a pitch line positioned between the interior surface and the exterior surface; and driving lugs attached to the interior surface of the drive belt, each of the driving lugs having at least a first sidewall making an angle with respect to the pitch line of the track, the angle being in the range of $[90 - (360/2n)]$ plus or minus 5 degrees." This claim was not amended to overcome the art cited but to more clearly define the invention. The Examiner

admits that the Nagorcka reference "...does not specify the first sidewall of the driving lugs making an angle with respect to the pitch line of the track, wherein the angle is in the range of $[90-(360/2n)] \pm 5, 3, 2, 1, \text{ or } 0$ degrees {n being the number of driving lugs on the track}." (See page 9, lines 2-4 of the office action). The Examiner then just states that all the features would be obvious.

There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. There is no motivation from within the reference to modify the art. The reason seems to be a way to provide interaction between the lug and the driving member. Nagorcka teaches a different way of accomplishing this with no hint of the way set forth in the claim. The Examiner seems to be applying hindsight in order to come up with the way set forth in claim 10.

Furthermore, the prior art reference must teach or suggest all the claim limitations. The Nagorcka reference does a teaching regarding the angle that the sidewall of the drive lug makes with respect to the pitch line of the track. However, the Nagorcka reference teaches away from the teaching of applicant's invention. The Nagorcka reference states: "The angle 36 (FIG. 4) along the lateral facing side 35 of lug 11 should be approximately 100 degrees from surface 44 to allow a sliding movement with guiding surface 68 when high lateral forces are applied to track 9." (See column 6, lines 42-45 of the Nagorcka reference. Applicant's invention prevents the sliding motion as stated at page 18, lines 26-27 of applicant's invention and other places. The teaching away of the Nagorcka reference is further evidence of lack of obviousness since, if one were disposed to modify Nagorcka as suggested by the Examiner, one of the features of Nagorcka would be destroyed. As a result, claim 10 overcomes the rejection under 35 USC § 103(a) as being unpatentable over Nagorcka.

Claims 11 - 16 depend from claim 10 and include all the limitations of claim 10 by their dependency. As a result, claims 11 - 16 overcome the Examiner's rejection under 35 USC § 103(a) as being obvious in view of the Nagorcka reference.

E. Rejection: Claims 4-8 were rejected under 35 USC § 103(a) as being unpatentable over Nagorcka as applied to claims 1-3 and 9-16, and further in view of Lemke et al. (U.S. 6,247,547).

F. Response: In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Simply put, the Examiner has failed to make out a *prima facie* case of obviousness. In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Claims 4-8 include the limitations of claim 1 by their dependency. Claim 1 recites "...a driver sprocket for said track having a central axis about which the driver sprocket rotates, the driver sprocket also having a driving portion that includes a center, the driving lugs having sidewalls which make an angle with respect to the inner surface of the track such that when the driving lug engages the driving portion of the driver sprocket, **the sidewall of the driving lug being substantially parallel to a radial from the central axis of the driver sprocket through the center of the driving portion of the drive sprocket when engaged with the track.**" This claim was not amended to overcome the art cited but to more clearly define the invention. As

previously applied to claims 1-3, the Examiner contended that FIGs. 5 and 11 of the Nagorcka reference shows all of the elements set forth in claim 1. Claim 1 that sets forth the relationship (bolded above) not found in the Nagorcka reference. FIG. 11 of the Nagorcka reference does not show the driving portion of sprocket engaging the drive lug of the track. FIG. 5 of the Nagorcka reference shows the driving portion of sprocket engaging the inner portion of the track but not engaging the drive lug of the track. FIG 6 of the Nagorcka reference shows the driving portion of sprocket engaging the drive lug of the track. Neither FIG. 5 or FIG. 6 of the Nagorcka shows the element having the relationship set forth above. Referring to FIG. 5, a line corresponding to the sidewall surface of the driving lug 11 is no where near parallel to a radial from the center of the drive sprocket and through the driving portion engaged with the driving lug 7. A radial from the center of the driving sprocket would be near the line shown that is more or less perpendicular to the inner surface of the track 44. FIG. 6 confirms the lack of the element having the relationship discussed above as a line corresponding to the surface of the sidewall of the driving lug is no where close to parallel with respect to a line (radial) passing through element 7 and the center of the driving sprocket (termed a drive wheel 5 in the Nagorcka reference). In short, Nagorcka fails to teach this element. The Lemke reference also does not contain this element. A prima facie case of obviousness is not made out since the prior art fail to teach or suggest all the claim limitations.

Furthermore, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. The Nagorcka reference rather teaches away from modifying the reference as suggested by the Examiner to yield applicants invention. The Nagorcka reference states: "The angle 36 (FIG. 4) along the lateral facing side 35 of lug 11 should be approximately 100 degrees from surface 44 to allow a sliding movement with guiding surface 68 when high lateral forces are applied to track 9." (See column 6, lines 42-45 of the Nagorcka reference. Applicant's invention prevents the sliding motion as stated at page 18, lines 26-27 of applicant's invention and other places. The teaching away of the Nagorcka reference is further evidence of lack of obviousness since, if one were disposed to modify Nagorcka as suggested by the Examiner, one of the features of Nagorcka would be destroyed. As a result, claim 1 overcomes the rejection under 35 USC § 103(a) as being unpatentable over Nagorcka in

view of Lemke. Claims 4-8 depend from claim 1 and include all the limitations of claim 1 by their dependency so, as a result, claims 4- 8 also overcome the rejection under 35 USC § 103(a) as being unpatentable over Nagorcka in view of Lemke.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6977 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

CARY SAFE ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6977

Date

2/2/05

By

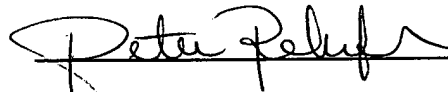


Richard E. Billion
Reg. No. 32,836

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 2 day of February, 2005.

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Name



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